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3. GENERAL STATEMENT OF REASONABLE NECESSITY

The COPP has statutory authority to establish rules that implement the Montana Campaign Practices and Finance Act as enacted and amended by the Legislature. These rules set forth minimum disclosure and reporting standards which are important elements in providing for the public disclosure of funds used in campaigns for elected office or ballot issues. These rules provide clarity to candidates and political committees to facilitate the ability to achieve the Act's purpose of keeping the public's trust, fulfilling their public duty of reporting and disclosure, and promoting the public's right to know.

In 1976 the Office of the Commissioner of Political Practices (COPP) enacted its first set of administrative rules. The last major re-write of the rules occurred in 2001. In an effort to organize the current COPP rules to follow the logical flow of a campaign, the commissioner has determined that we will retire the old campaign finance reporting and disclosure rule numbers, from ARM Title 44, chapter 10, subchapters 1 through 5 to Title 44, chapter 11, subchapters 1 through 7.

The COPP proposes the transfer, amendment, adoption, and repeal of current COPP rules to conform to current law, including *Citizens United*, and to clarify application of the Montana Campaign Practices and Finance Act to candidates and political committees. Further, the 2015 Legislature passed SB 89, SB 151, and SB 289, all of which are effective October 1, 2015, and the amendment, adoption, and repeal of COPP rules are necessary to define and clarify compliance standards in accord with these new laws.

The COPP recognizes and commends James Scheier, Bureau Chief for Agency Legal Services, for his assistance, guidance, and commitment over the previous 28 years working with the commissioners and staff of the COPP and to the benefit of the people of Montana. This commendation includes gratitude for Mr. Scheier's assistance in formulating these rules.

4. The rules as proposed to be adopted provide as follows:

~~the~~ NEW RULE I PRIMARY PURPOSE (1) The term "primary purpose" refers to a major, principal, or important goal, function, or reason for existence for a committee.

(2) The commissioner may determine that ~~a~~ ^{the} primary purpose of a committee is to support or oppose candidates or ballot issues based upon any one or more of the following criteria:

- (a) allocation and source of budget;
- (b) staff or members' activity, both during an election and otherwise;
- (c) the statement of purpose, articles of incorporation, bylaws, or goals;
- (d) election activity;

~~(14)~~(20) "Inactive elector" means an individual who failed to respond to confirmation notices and whose name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

~~(15)~~(21) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

(22) (a) "Incidental committee" means a political committee that is not specifically organized or operating for the primary purpose of supporting or opposing candidates or ballot issues but that may incidentally become a political committee by receiving a contribution or making an expenditure.

(b) For the purpose of this subsection (22), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the statement of purpose or goal of the person or individuals that form the committee.

(23) "Independent committee" means a political committee organized for the primary purpose of receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant to the limits set forth in 13-37-216(1).

(24) "Independent expenditure" means an expenditure for an election communication to support or oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue committee.

~~(16)~~(25) "Individual" means a human being.

~~(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.~~

~~—— (b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.~~

~~(18)~~(26) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

~~(19)~~(27) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by mailing ballots to all active electors.

~~(20)~~(28) "Person" means an individual, corporation, association, firm, partnership, cooperative,

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the major, principal, or important goal, function, or reason for existence for the committee.

- (1) The term "primary purpose" refers to ~~a committee's major, principal, or important goal, function, or reason for existence.~~

the primary purpose of the committee

- (2) The Commissioner may determine that ~~a committee's primary purpose~~ is to support or oppose candidates or ballot issues based upon, but not limited to, any one or more of the following criteria:

(a) Allocation and source of budget

(b) staff or members' activity, both during an election and otherwise

(c) the statement of purpose, articles of incorporation, bylaws, or goals

(3) The Commissioner, in determining the primary purpose of a committee, may also consider any of the following criteria:

(d) the number of persons, individuals, members, participants, or shareholders

* renumber
following

(e) election activity

(f) the history of the committee and the number of elections in which it has participated or registered

(g) receipt of solicited or earmarked contributions for a specified candidate, ballot issue, petition, or election activity

(h) the number and content of election communications, electioneering communications, or independent expenditures made

(i) coordination with any candidates or other political committees

(j) ordinary business actually conducted

(k) if a corporation, whether it was created and maintained as provided by law

(l) the date of founding, incorporation, or organization

(i) any corporation, entity, or organization that is formed or created within or during the six months immediately preceding voting for any election, and makes expenditures or takes contributions totaling \$250 or more to support or oppose any candidate or ballot issue for an election in this state in a calendar year may be classified by the commissioner as an independent committee pursuant to 44.11.201.

(5) The Commissioner's determination of the primary purpose of a committee shall be based upon a preponderance of the evidence.